

WRRTC Draft Minutes

Wisconsin River Rail Transit Commission Meeting of the Full Commission – Friday, 4 November 2005 at 10:00 a.m. Dane County Highway Garage, 2302 Fish Hatchery Road, Madison, WI

1. The Chair, Steve Foye, called the meeting to order at 10:01 a.m.
2. Roll Call (Commissioners present for all or part of the meeting):

Crawford	2nd VC	Tom Cornford	<input checked="" type="checkbox"/>	Rock (cont)	Sec.	Marshall Bown	<input type="checkbox"/>
		Ted Sheckler	<input type="checkbox"/>			William Agnew	<input checked="" type="checkbox"/>
		Ron Leys	<input type="checkbox"/>			Phil Blazkowski	<input checked="" type="checkbox"/>
Dane	Treas.	Forrest Van Schwartz	<input type="checkbox"/>	Sauk	2nd Treas.	Larry Volz	<input checked="" type="checkbox"/>
		Gene Gray	<input type="checkbox"/>			Robert Sinklair	<input checked="" type="checkbox"/>
		Richard Lenz	<input checked="" type="checkbox"/>			Joel Gaalswijk	<input checked="" type="checkbox"/>
Grant	2nd Sec.	Lois Brown	<input checked="" type="checkbox"/>			Marty Krueger	<input type="checkbox"/>
		Velma Weadge	<input checked="" type="checkbox"/>	Walworth	Advocate	Gerald Shroble	<input type="checkbox"/>
		Marion Martin	<input type="checkbox"/>			Tim Buchheit	<input type="checkbox"/>
Iowa	Chair	Steve Foye	<input checked="" type="checkbox"/>	Waukesha	Advocate	Richard Kuhnke	<input checked="" type="checkbox"/>
		Phil Roberts	<input type="checkbox"/>		1st VC	Karl Nilson	<input checked="" type="checkbox"/>
		Charles Anderson	<input checked="" type="checkbox"/>			Richard Manke	<input checked="" type="checkbox"/>
Rock		Henry Schoeberle	<input checked="" type="checkbox"/>			Robert Thelen	<input checked="" type="checkbox"/>

Others present for all or part of the meeting: Joni Graves (SWWRPC and staff to WRRTC); Jim Matzinger (Dane County and staff to WRRTC); Eileen Brownlee (WSOR's attorney); Frank Huntington and Roger Larson (WisDOT); Ken Lucht (WSOR); Virgil Kasper (Pink Lady Rail Transit Commission).

3. Motion accepting Graves' certification of public notice / Sinklair / Brown / Passed unanimously.
4. Motion approving the Agenda with some adjustments / Gaalswijk / Sinklair / Passed unanimously.
5. Motion approving the Oct 2005 Exec. Com. Minutes / Kuhnke / Agnew / Passed unanimously.
6. Motion adopting the Resolution confirming actions of the Exec. Committee & Sub-Committees since the last meeting of the Full Commission / Volz / Sinklair / Passed unanimously.

ONGOING PROPERTY ISSUES:

Note: The property issues on the Agenda were moved to the beginning of the meeting.

A. Removal / Relocation of Mazomanie Rail Spur

The Chair led the discussion and said there had been some concerns about the process.

Brownlee referred to the packet of correspondence which had been sent to Commissioners and summarized some of the issues related to the proposed removal/relocation of the rail spur. Huntington said some property had been deeded to the Village of Mazomanie some time ago and was not a part of this discussion. Lucht affirmed that the land under the sidetrack belongs to the Village and the proposed deeding is limited to the Roundy's site (and other property to be acquired by WSOR). Graves said the correspondence included a suggestion to deed property adjacent to the Old Feed Mill site and that this was also a separate issue.

Foye said he had only been invited to one meeting, and apparently Gene Gray had not been involved either, and some questions had been raised about that and about whether the meetings had been legally posted.

Lucht said Senator Erpenbach had called a meeting with WSOR and the Village and the Commission. Brownlee said that no matter who calls the meeting, the meeting must be posted, if it is required to meet the Commission's obligations. She said if only one Commissioner attends a meeting, it does not trigger a posting requirement. Concern was expressed that the Commission and individual Commissioners need to be conscientious about conducting Commission business in a manner that makes the process as transparent as possible.

Brownlee referenced the Wisconsin Supreme Court's opinion on *negative quorums*[†] and noted that the Commission

[†] This **definition of a negative quorum** is from the Wisconsin Dept. of Justice publication Wisconsin Open Meetings Law: "When a governmental body operates under a super majority rule (a two-thirds majority, for example), less than half

had formally established a committee – a formal sub-unit of government – with three members (Foye, Gray, and Van Schwartz) and that the committee has its own quorum, so two people would be a sub-quorum.

Foye said from now on Graves should be notified in advance of meetings where Commissioners would be representing the Commission so she can post the meeting, if necessary.

In further discussion about the property issues in Mazomanie Foye said that, in concept, he supported the terms of the proposed agreement. Nilson agreed and thanked Van Schwartz for his work.

Commissioners asked if the issue would come back before the Commission. Graves suggested the designated sub-committee could meet with its legal council, staff from WisDOT, and whoever else would be appropriate, and make a recommendation to the Commission. Foye and Blazkowski agreed and directed that such a meeting should be held. Foye said with Van Schwartz' travel schedule, the meeting should be held in January and the issue could come back to the full Commission in February.

After some discussion about who should draft the agreement, Lucht suggested that since this is primarily a Village project maybe their attorney should draft the agreement. Brownlee agreed that it would be appropriate for the Village to take this initiative and that in addition to the agreement, it would be necessary to have recordable documents (which may include legal descriptions, surveys, easement release docs, as well as the deed to the Commission).

Motion authorizing Foye to contact Mazomanie's Village President to determine whether they will have their attorney draft the agreement / Sinklair / Nilson / Motion passed unanimously.

FOLLOW-UP: 1) Commissioners will notify Graves in advance of meetings so they may be noticed, if required;
2) sub-committee mtg will be scheduled for January and recommendation will come to the full Commission in February;
3) Foye will contact Mazomanie's Village President to determine whether their attorney will draft the agreement.

B. Spring Grove Feed Mill property, Spring Grove, IL

10:54 a.m. Motion to go into closed session, pursuant to Wis. Stat. 19.85 (1)(e), to discuss bargaining negotiations with the Village of Spring Grove, IL, related to the vacant structure located on the Commission's right-of-way within the Village and, pursuant to Wis. Stat. 19.85 (1) (g), for the purpose of conferring with the Commission's legal counsel, Eileen Brownlee, about strategy regarding likely litigation and that Graves, Matzinger, Huntington, Larson, and Lucht would also remain / Sinklair / Weadge / Motion passed by unanimous roll call vote (Agnew, Anderson, Blazkowski, Brown, Cornford, Foye, Gaalswijk, Kuhnke, Lenz, Manke, Nilson, Schoeberle, Sinklair, Thelen, Volz, and Weadge). Kasper departed as the Commission began actions related to going into closed session.

11:25 a.m. Motion to reconvene in Open Session / Sinklair / Volz / Motion passed unanimously.

Motion authorizing Graves to send correspondence to the Village of Spring Grove summarizing the Commission's offer / Nilson / Sinklair / the makers of the motion accepted Anderson's friendly amendment that the letter should require a response within 25 days / Motion passed unanimously.

Graves said questions had been raised about the **choice-of-law provision** in the Commission's Spring Grove Feed Mill lease and asked Brownlee to provide some clarification. Brownlee said the choice-of-law provision naming Wisconsin had been very intentional. She said there is no legal impediment to writing a commercial lease subject to the laws of a

of the members of the body could block a proposal by agreeing to vote in opposition to the proposal. A group of sufficient size to block a proposal is called a 'negative quorum'. *Showers* made clear that the open meetings law applies when such a group gathers for the purpose of conducting governmental business. *Showers*, 135 Wis. 2d at 101-02. Accordingly, if a governmental body operates under a two-thirds majority rule, the open meetings law applies whenever more than one-third of its members gather to discuss or act on matters within the body's authority."

http://www.doj.state.wi.us/dls/docs/op_rec.pdf Another explanation of negative quorum is provided by UW-Extension: "...the requirements of the open meeting law can also be triggered when less than an actual quorum is present or participating. The Wisconsin Supreme Court has held that the open meeting law applies whenever members of a governmental body meet to engage in government business, whether it's for purposes of discussion, decision or merely information gathering, if the number of members present are sufficient to determine the parent body's course of action regarding the proposal discussed at the meeting. See *State ex rel. Newspapers, Inc. v. Showers*, 135 Wis.2d 77, 398 N.W.2d 154 (1987). This number can be the number sufficient to pass a proposal or the number necessary to defeat a measure, termed a 'negative quorum'." <http://www.uwsp.edu/cnr/landcenter/tracker/spring2004/spring2004.pdf>

specific state and the courts have uniformly upheld choice-of-law by contract. She said if the contract did not include a choice-of-law provision identifying Wisconsin, then the law itself under choice-of-law principles would require the use of the law of Illinois because we are dealing with an interest in real estate. After providing an example to illustrate the point, she concluded that although there are some types of contracts where a choice-of-law provision would not be upheld, in a commercial lease situation both parties are presumed to be "business savvy" and there are no strict requirements about the content of commercial leases. She departed after answering a few other questions.

REPORTS:

7. **WSOR Monthly Operator's Report** – Ken Lucht, WSOR

a-c) Lucht reported that welded rail will be delivered shortly for use on the Orfordville Hill and Hartford-to-Slinger projects and that WSOR has been doing some work on bridges. Traffic is remaining stable and there's been an increase in shipping coal. The ethanol plant in Milton is under construction and WSOR is working with the developer to design the rail yard using a design similar to the one at Badger State Ethanol. Recently, Lucht and Bill Gardner met with the Prairie du Chien Harbor Commission to discuss the possibility of shipping more through PDC; the Harbor Commission expressed interest and the City's attorney is reviewing the Agreement that they have with the operator on the island. He said WSOR would be very interested in serving the proposed Boscobel Ethanol Plant, if and when it moves forward. In Madison, WSOR has been in discussions about commuter rail, although the City is now looking at street cars and plans to study that option.

8. **WisDOT Updates** – Frank Huntington and Roger Larson, WisDOT

a-d) Huntington provided a brief update on WisDOT's studies looking at selected bridges and at pavement wear. He explained they are in the process of reviewing the FRPP / FRIIP funding applications. With regard to the right-of-way / encroachments issue, he said letters had been sent to property owners in the Stoughton area but WisDOT has not followed up yet; there was no update on the encroachments issue in Crawford County.

9. **Administrative Staff Report** – Joni Graves, SWWRPC / WRRTC staff

a) Nilson has resigned from the **Railroad Coordinating Committee (RRCC)**, due to other time commitments. The Commission asked interested members to volunteer. Lucht said the RRCC meets two to three times a year.

FOLLOW-UP: The Commission seeks volunteer(s) interested in an appointment to fill the vacancy on the RRCC.

b) **Motion to adopt the 2006 WRRTC Meeting Calendar** (6-Jan XCom; 10-Feb Full Com; 10-Mar XCom; 7-Apr XCom; 5-May Full Com (elections); 9-Jun XCom; 7-Jul XCom; 4-Aug Full Com; 8-Sep XCom; 6-Oct XCom; 10-Nov Full Com; 8-Dec XCom) / **Nilson / Sinklair / Motion passed unanimously**. Graves said Gray and Van Schwartz had suggested that some summer meetings (exec and/or full commission) go "on the road" to communities served by rail and possibly include customer and/or site visits. After some discussion – both pro and con – it was agreed to make no changes at this time but to think about it.

FOLLOW-UP: The Commission may wish to revisit the idea of having some meetings in the region.

c) **Vacancy** - Graves said she had received a message from the wife of Gerald Shroble explaining that he is in ill-health and would be leaving the Commission; his wife had asked that he be removed from the Commission's mailing list. Graves said she had followed up with Walworth County to make sure they were aware of this pending vacancy.

d-f) Graves provided an update on the permit for the **Association of Wisconsin Snowmobile Clubs** / Grant County; recent **web statistics** for www.wrrtc.org; and explained that she had reprioritized the **Commissioner Responsibilities / "Job Description"** project in order to address property issues in Spring Grove, IL, but would return to this project as time permits.

10. **WRRTC Financials & Contracts** – Jim Matzinger, Dane County / WRRTC staff

a-b) The **Treasurer's Report** was distributed and Matzinger explained that, after talking with the Commission's auditors, he had made a change and the "Richland Money" in the amount of \$110K is now being reflected as "retained earnings" which more accurately reflects that it is the Commission's money. He noted that the capital line on the second page represents money the Commission has at its disposal. Four **invoices** had been received by WRRTC: 1) Joni Graves for out-of-pocket expenses, including accessing online court docs, related to the Spring Grove Feed Mill; Dane County's accounting fees; an advance-of-funds for the Hartford-to-Slinger project; and a mileage voucher from Van Schwartz. **Motion to accept the Treasurers Report for October and pay the bills that were presented / Nilson / Sinklair / Motion passed unanimously.**

c) **2006 Request for project funds** - Matzinger distributed a simple form to each executive committee member (or a representative from that county) and asked them to indicate the budget amount requested and/or approved and return it to him.

d) **Request that the Commission establish a policy for reimbursing mileage / expenses** - Graves explained that Van Schwartz had asked the Commission to establish a policy for reimbursing mileage / expenses for Commissioners and staff attending authorized meetings, such as the Railroad Coordinating Committee (the Commission does have a policy to reimburse its members for travel to 66-Committee meetings). Foye asked for clarification since some, if not all, Commissioners are reimbursed for travel expenses by their respective counties and he asked that this item be returned for discussion at a future meeting.

FOLLOW-UP: Request for more info related to the proposed expansion of the current mileage reimbursement policy.

11. Report from the Railroad Coordinating Committee meeting (October 17th)

Lucht provided an update on the meeting, noting that one item of discussion had been the need for establishing another funding source for acquisitions, rather than taking those funds from the same pot of money as rehab projects, since there are other rail corridors that WisDOT may have an opportunity to acquire but that using these funds limits the ability to do much-needed rehab work on the existing system. Graves and Van Schwartz had represented the WRRTC at the meeting.

12. Report from the Rail Inspection trip - Walworth to Janesville (October 21st)

Lucht reported that the tour had gone over old deteriorated 90-lb rail and also on a new section of welded rail, noting that the theater car has better suspension and the ride would have been worse in a box car; unfortunately, because of the schedule for Chicago trains, they hadn't been able to go on the new rail. Lucht said he had sent the notice / invitation and everyone had been welcome to attend; the WRRTC had been represented by Graves, Lenz, Nilson, Shoeberle, Van Schwartz, and the Commission's webmaster Pat Weeden. Lucht said that WSOR would like to provide this tour annually for each Commission and Foye thanked WSOR for providing the opportunity. *Note: the Commission's website www.wrrtc.org currently has an article and photo from the inspection trip (both by the Pat Weeden).*

OTHER COMMISSION BUSINESS:

13. A request from Wisconsin Public Television to conduct movie production activities on an out-of-service bridge on the WRRTC system had been discussed informally at the October meeting; Huntington told the Commission no action was needed, since it was within WSOR's authority to grant the approval.

14. Budgeting & Consistency

a) At the August meeting, Commissioners were asked to seek local input – related to possible establishment of a consistent annual budget request vs. continuing to tie annual funding requests to specific rehab projects – and report back to the full Commission. Foye opened the discussion and said Iowa County did not like the idea because it would set a precedent for other departments. Nilson said rather than establishing a “membership fee,” the counties should be provided with actual estimates or projections each year and, as an example, if the requested amount were \$26K, but all of it wasn't used, the Commission would be expected to carry the funds over. He said this is a good system now, but this should be an ongoing discussion Matzinger said if there were a year when the state's allocated \$6M were available for projects on the system, it would require a match of \$35K / county with 17 member counties participating. Volz asked, “And where would that money come from if there are caps on county spending?”

b) Graves, Matzinger, Huntington, and Lucht provided a brief summary of the proposed timeline for 2006 project proposals and plans to provide projected budget request information earlier in the year.

In other business, the Commission welcomed its newest member – Dick Lenz, Dane County – aboard.

15. The meeting adjourned by acclamation at 12:13 p.m.